

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TOMMIE CARTER,

Plaintiff,

v.

JOLINDA J. WATERMAN,

Defendant.

OPINION and ORDER

13-cv-742-bbc

Plaintiff Tommie L. Carter brings this action under 42 U.S.C. § 1983 alleging that Jolinda J. Waterman, a nurse at the Wisconsin Secure Program Facility violated his constitutional right to receive treatment for a serious medical need. Plaintiff requests leave to proceed without prepayment of fees and costs. Plaintiff qualifies for indigent status under 28 U.S.C. § 1915, and has made an initial, partial payment toward the full filing fee for this lawsuit. Because plaintiff is incarcerated, the Prison Litigation Reform Act also requires the court to determine whether the proposed action (1) is frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A.

After examining the complaint, I will allow plaintiff leave to proceed on a claim that defendant Waterman failed to provide treatment for plaintiff's chest pain, in violation of the Eighth Amendment.

In addressing any pro se litigant's pleadings, the court must construe the allegations generously, and hold the complaint "to less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 521 (1972). Plaintiff fairly alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff Tommie Carter is confined in the Wisconsin Department of Corrections at the Green Bay Correctional Institution. At the time relevant to this case, he was housed at the Wisconsin Secure Program Facility in Boscobel, Wisconsin. Defendant Jolinda J. Waterman is employed at the Boscobel facility as a nurse.

On or about December 28, 2011, plaintiff was experiencing "intense chest pain" lasting for approximately two to four minutes. He was unable to breathe, walk or stand without having a "tight crushing feeling in the center of his chest." He was also spitting up blood. A security officer (Sergeant Wallace) contacted defendant and described plaintiff's symptoms, but defendant refused to see him.

OPINION

Plaintiff's claim arises under the Eighth Amendment of the United States Constitution. A prison official may violate this right if the official is "deliberately indifferent" to a "serious medical need." Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). A "serious medical need" may be a condition that a doctor has recognized as needing

treatment or one for which the necessity of treatment would be obvious to a lay person. Johnson v. Snyder, 444 F.3d 579, 584-85 (7th Cir. 2006). The condition does not have to be life threatening. Id. A medical need may be serious if it “significantly affects an individual's daily activities,” Gutierrez v. Peters, 111 F.3d 1364, 1373 (7th Cir. 1997), if it causes significant pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or if it otherwise subjects the prisoner to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825 (1994). “Deliberate indifference” means that the officials are aware that the prisoner needs medical treatment, but are disregarding the risk by consciously failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997).

Thus, under this standard, plaintiff’s claim has three elements:

- (1) Did plaintiff need medical treatment?
- (2) Did defendant know that plaintiff needed treatment?
- (3) Despite her awareness of the need, did defendant consciously fail to take reasonable measures to provide the necessary treatment?

In this case, plaintiff alleges that defendant refused to provide prompt medical care even though she knew he was experiencing intense chest pain and spitting up blood, so it is reasonable to infer at this early stage of the proceedings that plaintiff needed treatment and that defendant knew this but consciously refused to help him. However, at summary judgment or trial, it will be plaintiff’s burden to come forward with specific evidence showing that a reasonable jury could find in his favor on each element of his claim. Henderson v. Sheahan, 196 F.3d 839, 848 (7th Cir. 1999).

ORDER

IT IS ORDERED that

1. Plaintiff Tommie Carter is GRANTED leave to proceed on his claim under the Eighth Amendment that defendant Jolinda J. Waterman refused to provide medical care in December 2011 when plaintiff was experiencing chest pains and spitting up blood.

2. For the time being, plaintiff must send defendant a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendant or to defendant's attorney.

3. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.

4. Under an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on defendant. Plaintiff should not attempt to serve defendant on his own at this time. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendant.

5. Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a

letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund accounts until the filing fee has been paid in full.

6. If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendant or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 7th day of November, 2014.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge